

**Rule 15, Ariz. R. Crim. P.**

**EVIDENCE — DISCOVERY — *BRADY* — Lost or destroyed evidence .....  
.....Revised 11/2009**

Evidence must be “material exculpatory evidence” for *Brady* to apply. *Illinois v. Fisher*, 540 U.S. 544, 549 (2004); *State v. Speer*, 221 Ariz. 449, ¶ 37, 212 P.3d 787, 795 (2009). Evidence that has been lost or destroyed and is merely *potentially* exculpatory falls under the doctrine established in *Arizona v. Youngblood*, 488 U.S. 51 (1988), and *State v. Youngblood*, 173 Ariz. 502, 844 P.2d 1152 (1993). While good or bad faith is irrelevant with respect to the prosecution’s failure to disclose exculpatory evidence, the defense must show bad faith on the part of the prosecution in failing to preserve potentially useful evidence in order to show a violation of due process. *See Arizona v. Youngblood*, 488 U.S. 51, 57 (1988). If bad faith is shown, the proper remedy is dismissal of the charges. *See State v. Youngblood*, 173 Ariz. 502, 507, 844 P.2d 1152, 1157 (1993).